

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**(1) DAVID and PEGGY BROCK,
husband and wife,**

Plaintiffs,

vs.

**(1) ZURICH AMERICAN INSURANCE
COMPANY, a foreign corporation,**

Defendants.

Case No. _____

Removed from District Court
for Oklahoma County
Case No. CJ-2007-528

NOTICE OF REMOVAL

COMES NOW the Defendant, Zurich American Insurance Company, and pursuant to 28 U.S.C. §§1441, 1446(a) and (b), hereby gives notice of removal of this action from the District Court of Oklahoma County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma, based upon the following:

JURISDICTION

Removal jurisdiction based upon diversity of citizenship is founded on the following:

1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of cases.
2. This case, styled *David and Peggy Brock v. Zurich American Insurance Company*, was filed on January 19, 2007, in the District Court for Oklahoma County, Oklahoma, being civil

action number CJ-2007-528 on the docket of that Court. (*See* Certified Copy of Docket Sheet attached as Exhibit “A”).

3. The Defendant, Zurich American Insurance Co. was served with the Summons and Petition on March 22, 2007, via the Oklahoma Insurance Department. (*See* Summons Attached as Exhibit “B”).

4. This Notice of Removal is filed within thirty (30) days of service of the Petition on this Defendant, and is timely under 28 U.S.C. § 1446(b).

5. Plaintiff, David Brock, states in connection with his work relationship with Melton Truck Lines he purchased an occupational insurance policy offered by Zurich American Insurance Company, which afforded him certain coverage as outlined in the subject policy of insurance. On or about January 4, 2006, David Brock alleges an occupational accident occurred, wherein, he suffered a head injury. Subsequently, on January 8, 2008, Mr. Brock alleges he suffered a stroke related to this head injury. (*See* Petition, Paragraphs 7, 10 and 12, attached as Exhibit “B”). Mr. Brock alleges Zurich American Insurance Company breached the policy of insurance by failing to properly handle Mr. Brock’s claims and pay benefits as afforded under the policy of insurance. (Exhibit “B”, *generally*). Peggy Brock appears to piggy back Mr. Brock’s claim, although no policy of insurance exists between her and Defendant, and asserts an Emotional Distress claim against Defendant. (Exhibit “B”, ¶¶ 20-21). Plaintiffs allege in their Petition they are citizens of the State of Tennessee. (Exhibit “B”, ¶ 1).

6. Defendant, Zurich American Insurance Company. is, and was at the time of the institution of this civil action, a foreign corporation with its principal place of business in the State of Illinois. As a result, Zurich American Insurance Company is not now, and was not at the

time of filing of the petition, a citizen and resident of the State of Oklahoma within the meaning of the Acts of Congress relating to the removal of causes.

7. Jurisdiction of this action is based upon 28 U.S.C. §§ 1332, 1441, and 1446, as amended.

8. The amount in controversy is believed to exceed the sum of Seventy-Five Thousand and no/100 Dollars (\$75,000.00), exclusive of interest and costs. In support of this belief and in compliance with *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995), Defendant asserts as follows: Plaintiff, David Brock, in his Petition asserts Defendant failed to pay benefits afforded him under the disability section and medical expense benefit sections of the subject policy of insurance. (Exhibit “B”, ¶ 14). Further, Mr. Brock asserts he is unable to return to work as a result of “a catastrophic stroke”. (Exhibit “B”, ¶¶ 12 and 15). Under the subject Policy of Insurance, the “maximum” benefit payable for Temporary Total Disability was \$500.00 per week for 104 weeks, or a total of \$52,000. The “maximum” benefit payable for Continuous Total Disability was \$500.00 per week until age 70 with a “maximum” benefit of \$200,000.00. Mr. Brock was 42 years old at the time of the alleged incident. In addition, Peggy Brock, a named Plaintiff, appears to have alleged an emotional distress claim in the Petition, seeking in excess of \$10,000 for damages related to the same. (Exhibit “B”, ¶ 22). Further, Plaintiff is aware of approximately \$42,000.00 in medical bills that Mr. Brock seeks to have paid under the subject policy of insurance. Additionally, each Plaintiff seeks Punitive damages in excess of \$10,000, for a combined total of \$20,000.00. (Exhibit “B”, ¶ 26). Thus, the combined total for damages sought by Plaintiffs in their Petition, exclusive of interests and costs, appears to exceed \$75,000.00.

9. Attached hereto and marked as Exhibit "B" is a true and correct copy of all pleadings received by the Defendant, styled *David Brock and Peggy Brock v. Zurich American Insurance Company*. Said documents constitute all pleadings filed and served on this Defendant in said civil action designated in the District Court for Oklahoma County, Oklahoma. A certified copy of the docket sheet is attached as Exhibit "A".

10. A copy of this Notice of Removal has been filed with the Clerk of the District Court of Oklahoma County, Oklahoma.

WHEREFORE, removal of this action to the United States District Court is proper under 28 U.S.C. § 1441(a) and (b), because there is complete diversity of citizenship between the Plaintiffs, David Brock and Peggy Brock, and the Defendant, Zurich American Insurance Company, who is not a citizen of the state in which this action is proceeding.

Respectfully submitted,

**PERRINE, MCGIVERN, REDEMANN, REID,
BERRY & TAYLOR, P.L.L.C.**

/s/ David C. Senger

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ATTORNEYS FOR DEFENDANT

ZURICH AMERICAN INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants and by U.S. Mail to:

Counsel for Plaintiff:

Phillip O. Watts
210 Park Avenue, Suite 1110
Oklahoma City, OK 73102

/s/ David C. Senger

William D. Perrine

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